ROPES & GRAY

Ropes & Gray's Investment Management Update March – April 2026

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The following summarizes recent legal developments of note affecting the mutual fund/investment management industry.

SEC Issues Notice of Intent to Amend Rule 205-3's Definition of "Qualified Client" to Adjust for Inflation

Section 205(a)(1) of the Advisers Act generally prohibits an investment adviser from entering into an investment advisory contract that charges a performance-based fee – *i.e.*, compensation to the adviser based on a share of the capital gains or capital appreciation of funds in a client's account. Rule 205-3 under the Advisers Act provides an exemption to the general prohibition in Section 205(a)(1) requiring, among other things, that any client entering into an advisory contract with a performance-based fee is a "qualified client," as defined in Rule 205-3(d)(1).

- Rule 205-3(d)(1) provides that a person is a qualified client if (i) the client has at least a specified minimum under management of the adviser immediately after entering into the advisory contract (the "AUM test") or (ii) the adviser reasonably believes, immediately prior to entering into the advisory contract, that the client has a net worth of more than a specified amount (the "net-worth test").
- The Dodd-Frank Wall Street Reform and Consumer Protection Act amended Section 205(e) of the Advisers Act to provide that, every five years, the SEC must adjust for the effects of inflation the dollar-amount thresholds in the AUM test and the net-worth test, rounded to the nearest multiple of $100,000. In May 2021, the SEC issued a Rule 205-3 adjustment to increase the AUM test from

$1 million to $1.1 million and the net-worth test from $2.1 million to $2.2 million.

On March 27, 2026, the SEC issued a notice stating that it intends to issue an order on or about May 1, 2026 making the required inflation adjustments to the dollar-amount thresholds in Rule 205-3(d)(1), thereby increasing the AUM test from $1.1 million to $1.4 and the net-worth test from $2.2 million to $2.7 million effective 60 days following the order.

Court Dismisses Shareholder Claims Challenging Fund's Multi-Class Fee Structure

In a March 25, 2026 opinion, the U.S. District Court for the Southern District of New York dismissed all four claims brought by shareholders of the Fidelity Government Money Market Fund (the "Fund") against the Fund's trustees, officers, and investment adviser, Fidelity Management & Research Company LLC ("Fidelity" and, with the other defendants, the "Defendants"). The four claims all concern the Defendants' alleged failure to implement an automatic conversion mechanism when a Fund shareholder satisfied the Premium Class account minimum.

Background

The plaintiffs were holders of the Fund's Retail Class shares, which carries a maximum expense ratio of 0.42%. The Fund also issues Premium Class shares, which carries a lower maximum expense ratio of 0.32% but requires a minimum investment balance of $10,000 (retirement accounts) or $100,000 (non-retirement accounts). The plaintiffs' account balances exceeded the Premium Class minimum, yet their shares were not converted to the lower-cost Premium Class. They brought a putative class action on behalf of similarly situated Retail Class shareholders, alleging that the Defendants' failure to implement an automatic conversion mechanism or otherwise address the higher expenses charged to eligible Retail Class shareholders resulted in millions of dollars in overcharged expenses.

The plaintiffs asserted four claims: (i) breach of fiduciary duty against the Fund trustee and officer Defendants, (ii) breach of the implied covenant of good faith and fair dealing against the trustee Defendants, (iii) aiding and abetting breach of fiduciary duty against Fidelity, and (iv) unjust enrichment against Fidelity. All the Defendants moved to dismiss.

Breach of Duty of Care. The court dismissed the plaintiffs' breach of fiduciary duty claim, applying Delaware law and the gross negligence standard. The court first noted that the plaintiffs did not substantively argue, nor could they, that the Defendants failed to inform themselves of material information. To the contrary, the complaint was "replete" with allegations that the Defendants periodically reviewed the charges imposed on Retail Class shareholders in comparison to those charged by competitor funds and were well aware that Retail Class investors were paying higher fees and were not being automatically converted. The question thus reduced to whether the Defendants acted "outside the bounds of reason" by failing to implement an auto-conversion mechanism or equivalent. The court held they did not, for several reasons:

- The plaintiffs did not allege that the multi-class structure itself lacked any conceivable rational basis.
- The plaintiffs did not dispute that they could have readily converted their own shares to the Premium Class once eligible, and did not allege that the Defendants concealed the expense ratios applicable to either share class, which were fully disclosed in SEC filings. The plaintiffs thus sought to fault the Defendants for not taking actions the plaintiffs could have taken entirely on their own.
- The expenses charged to the plaintiffs appeared to be the product of arm's-length negotiation between the trustees and Fidelity, which is "inconsistent with participation in a fiduciary breach."

- The plaintiffs alleged only that "at least two" of Fidelity's competitors employed auto-conversion mechanisms – falling short of showing that the absence of such a feature was grossly negligent or outside the bounds of reason.

Aiding and Abetting Breach of Fiduciary Duty. The court dismissed the plaintiffs' aiding and abetting claim against Fidelity because it requires proof that a fiduciary breached its duty, and the plaintiffs failed to establish a predicate breach of fiduciary duty.

Unjust Enrichment. The court dismissed the plaintiffs' unjust enrichment claim against Fidelity under New York law, holding that it was precluded by the existence of valid contracts governing the subject matter at issue. The plaintiffs did not dispute that the Trust Agreement – which authorizes the trustees to charge expenses to shareholders – was binding on them, nor did they allege that Fidelity's management contract with the Fund was invalid. Because the existence of a valid contract governing the subject matter precludes an unjust enrichment claim "even against a third-party non-signatory," the claim failed.

Breach of the Implied Covenant of Good Faith and Fair Dealing. The court dismissed the plaintiffs' implied covenant claim, applying the Delaware framework beginning with whether the relevant contract contained a "gap that needs to be filled." The court held that no gap existed because the conduct at the heart of the plaintiffs' claim – the expenses charged to them – was expressly covered by the Trust Agreement, which grants the trustees the "power and authority" to "allocate assets, liabilities and expenses of the Trust to a particular Series or class." A party "cannot base a claim for breach of the implied covenant on conduct authorized by the agreement."

Outcome

The court granted the Defendants' motions to dismiss in their entirety. The court noted that its rules had afforded the plaintiffs the opportunity to amend in response to the motions to dismiss rather than opposing them, and that the plaintiffs chose to oppose.

Court Dismisses Fraud Claims against BDC Manager over Allegedly Inflated Valuations

In a March 30, 2026 opinion, the U.S. District Court for the District of Maryland dismissed all remaining claims in *Star Equity Fund, LP v. Firsthand Capital Management, Inc.* in which the plaintiff alleged that the defendants inflated the published net asset values of a business development company (a "BDC") by knowingly overstating the valuations of the company's principal investments.

Background

The plaintiff, the largest shareholder of Firsthand Technology Value Fund, Inc. (the "Fund"), brought suit against the Fund's investment adviser, the Fund's independent valuation firm, and current and former directors and officers of the Fund (collectively, the "Defendants"). The plaintiff alleged that Defendants violated Rule 10b-5 under the Exchange Act by inflating the Fund's published net asset values based upon overstatements of the values ascribed to the Fund's three principal assets.

The Decision

The court dismissed the plaintiff's securities fraud claim for failure to adequately plead misrepresentation and scienter. The court noted that most of the Fund's assets were categorized as "Level 3" securities under ASC Topic 820-10 (fair value measurement hierarchy), indicating that they constitute the most difficult type of securities to value. The parties agreed that the Fund's published net asset values constituted statements of opinion, which are actionable only if the speaker lacked a reasonable basis for the statements and did not honestly believe the statements. The court found that the plaintiff's allegations did not suffice to establish either element.

- ***Defendants' Reasonable Basis***. The court observed that significant risk was inherent to the Fund's nature as a BDC investing in development-stage companies. For one of the three substantial assets in question, the court noted that the Defendants progressively decreased their valuations in response to a series of deteriorating events, ultimately deeming the investment to be worth $0. The court additionally found no facts suggesting Defendants lacked a reasonable basis for continuing to ascribe some value to the investments in question during the interim periods, noting that even the Fund's investment in another asset, while a net loss, eventually generated $6.1 million upon sale. With respect to the third substantial asset, the court acknowledged that the independent valuation firm had informed the Fund's Board that the asset differed significantly from the public company comparators used in its valuation methodology but concluded that the complaint contained insufficient detail about the valuation process to infer that the methodology was unreasonable, particularly given the inherent difficulty of valuing Level 3 investments.
- ***Scienter***. The court acknowledged that the plaintiff alleged facts suggesting the investment adviser and the Board had financial incentives to inflate valuations, and that these facts could support a reasonable inference that valuations were knowingly inflated. However, applying the applicable legal standard – requiring the inference of scienter to be "at least as compelling" as any opposing inference – the court found the more persuasive inference was that Defendants were operating in a highly risky and subjective area and calculated valuations in a reasonable and honest, even if necessarily imperfect, manner.

Based upon these findings, the court granted the Defendants' separate motions to dismiss.

FinCEN Proposes Amended AML/CFT Rules

On April 7, 2026, the Department of the Treasury's Financial Crimes Enforcement Network-("FinCEN") issued a Notice of Proposed Rulemaking (the "Notice") intended to "fundamentally reform financial institutions' anti-money laundering and countering the financing of terrorism (AML/CFT) programs under the Bank Secrecy Act (BSA)."

- Registered investment companies are "financial institutions" for purposes of FinCEN regulations and are already required to have AML/CFT programs in place.[1]
- As described in a Ropes & Gray Alert, in 2025, FinCEN announced that it was delaying, from January 1, 2026 until January 1, 2028, implementation of rules extending certain AML compliance obligations to registered investment advisers by deeming these advisers to be financial institutions.

While the Notice proposes to amend the AML/CFT program rules applicable to registered funds, the practical impact for most fund complexes is expected to be limited. The amendments primarily update terminology, cross-references, and regulatory structure, and signal a reorientation of supervisory expectations toward program effectiveness rather than technical box-checking – without materially altering the substance of funds' existing compliance obligations. One notable exception is that the amendments would require a fund complex's designated AML officer to be "located in the United States." Nonetheless, the Notice provides that "personnel located outside of the United States would still be permitted to perform certain AML/CFT functions."

REGULATORY PRIORITIES CORNER

The following brief updates exemplify trends and areas of current focus of relevant regulatory authorities.

The 2026 ICI Investment Management Conference

In general, the conference reflected the industry's continued momentum under an encouraging regulatory environment. Brian Daly, Director of the SEC's Division of Investment Management ("IM"), emphasized modernization and deregulation as key priorities and urged the industry to proactively engage with the SEC during the current administration's remaining tenure. Commissioner Hester Peirce, delivering keynote remarks in what she framed as a bookend to her tenure, called for a move away from a "misery" model of regulation in favor of a framework aligned with the practices of well-run firms. Director Daly's remarks and Commissioner Peirce's keynote are summarized below.

Fireside Chat with Brian Daly

IM Priorities. Director Daly offered his personal views on IM's current priorities and outlook. He emphasized that IM is engaged in extensive collaboration with other SEC divisions and offices, as well as across Washington. He noted IM's focus on "greater retailization" to provide retail investors with more access to alternative investments. He noted that the DOL is working on a proposal to implement President Trump's Executive Order 14330, "Democratizing Access to Alternative Assets for 401(k) Investors." He stated that while the focus of the DOL and IM is slightly different, as the DOL is focused on "pre-tax, post-retirement" dollars for investing compared to IM's focus on "post-tax, pre-retirement" dollars, IM intends to serve as a value partner to the DOL.

On rulemaking more broadly, Director Daly stated that IM aims to take a sensible approach to proposing changes in order to avoid needlessly throwing out existing protections or introducing more uncertainty than is necessary. He also highlighted that IM is focused on modernization and deregulation.

Reduction in Workforce. Addressing recent workforce reductions, Director Daly acknowledged that IM is smaller than at its peak but stated that it remains fully operational. He encouraged industry professionals to consider public service at the SEC, noting upcoming openings.

Modernizing Investor Communications. Director Daly summarized the SEC's recent Private Markets Roundtable on the accelerating retailization of private markets. He noted that a key theme was the importance of ensuring that retail investors understand the characteristics and risks of semi-illiquid products. He tied this to the broader need for effective electronic delivery and modern investor communication, urging the industry to leverage technology and propose innovative solutions rather than waiting for the SEC to prescribe the form of 21st-century disclosure. He encouraged creative approaches from the industry that meet investors where they are, including through mobile platforms and digital channels.

Proxy Voting. Referring to President Trump's December 2025 Executive Order, "Protecting American Investors from Foreign-Owned and Politically-Motivated Proxy Advisors," Director Daly was asked to discuss how much of the executive order will belong to IM and the potential resulting actions. He acknowledged that certain aspects of the executive order are IM-specific, and that IM is "studying and assessing" potential next steps. He discussed his remarks delivered on January 8, 2026 at the New York City Bar Association addressing proxy voting practices. He stated that his remarks were intended to encourage a broader reassessment of proxy voting practices, including asking investment advisers to re-evaluate

whether their current proxy voting activities align with their investment mandates and client objectives. He noted the distinction between active and passive fund managers in this regard. Regarding fund proxy reform more broadly, he characterized it as a multi-division effort requiring collaboration with the Division of Corporate Finance and other divisions and offices.

Tokenization. Director Daly noted that many of the key tokenization questions fall within the purview of the Division of Trading and Markets, but that IM is working closely with the Division of Trading and Markets on related issues. He stated that IM looks at tokenization as a way to generate more efficiency and lower expenses for investors and to make investments in funds, particularly more liquid funds such as money market funds, more accessible to investors.

15% Limit in Private Funds. In response to a question regarding whether the 15% limitation in private funds will be lifted for exchange-traded CEFs, Director Daly noted that ADI 2025-16 is reasonably clear that it is limited to non-exchange traded registered closed-end funds that invest in private funds. However, he noted that as the industry continues to develop interesting products, there will be new challenges, including in particular around portfolio transparency.

SEC's Reg Flex Agenda and Other Areas of Interest. Director Daly discussed certain items on the Spring 2025 Reg Flex Agenda, including modernizing the cross-trading rule. He also discussed items of interest for the industry, including the SEC's continued consideration of the SEC's Political Contributions Rule, the SEC's Investment Adviser Recordkeeping Rule and modernization efforts more broadly. He cautioned against anchoring any new rules and/or requirements to current technologies, advocating instead for a technology-neutral approach that would not need to be redone in five years.

Director Daly closed by emphasizing the urgency of IM's work, noting that approximately 800 days remain until the next presidential election, and urging the industry to proactively engage with IM and bring forward ideas and to react quickly to SEC proposals.

Keynote Remarks: Hester Peirce, SEC Commissioner

Commissioner Peirce delivered keynote remarks followed by a moderated discussion with Eric J. Pan, ICI President and Chief Executive Officer.

Commissioner Peirce framed her remarks as a "bookend" to her first ICI Investment Management Conference appearance at the conference in 2018 and highlighted the significant growth of the fund industry over that period. She emphasized that, as funds play an increasingly central role in retirement and education savings, the importance of effective regulation has grown correspondingly.

Regulatory Philosophy: Moving Away from the "Misery" Model. Commissioner Peirce framed her remarks around a critique of what she described as a "misery" model of regulation. Drawing on a personal anecdote, she questioned whether regulation should impose hardship on firms to build compliance discipline, concluding that it should not. Instead, she emphasized that effective regulation should align with the practices of well-run firms and enable them to serve investors efficiently.

She cautioned that excessive compliance burdens risk displacing client-focused activity, noting that industry participants may be driven away when roles become primarily compliance-oriented rather than client-facing. While acknowledging that certain recent rulemakings have contributed to these pressures, she also pointed to regulatory inaction – such as the failure to modernize e-delivery and delays in using exemptive authority – as contributing to industry friction.

Guiding Principles for Regulation. Commissioner Peirce outlined several principles that should guide regulatory policy: (i) regulation should respond to clearly identified problems, (ii) regulators should actively engage with industry participants and investors, (iii) investors ultimately bear the cost of

regulation, (iv) the SEC should embrace, rather than resist, technological innovation, and (v) the regulatory framework should foster competition and reduce barriers to entry. She emphasized that even modest cost reductions can meaningfully improve investor outcomes given the scale of assets invested in funds.

Fund Proxy Voting and Quorum Requirements. Commissioner Peirce identified fund proxy voting requirements as a longstanding structural challenge. She noted that quorum thresholds are difficult to meet in a retail investor base, particularly where investors hold fund interests through intermediaries. She discussed several potential approaches to reform, including (i) lowering quorum thresholds while increasing approval thresholds, (ii) permitting alternative approval mechanisms, such as board approval, (iii) providing advance notice frameworks for certain actions, and (iv) implementing retail proxy programs allowing standing voting instructions. She emphasized the importance of industry and investor input in developing solutions and suggested that reforms should reduce costs without undermining shareholder rights.

Cost of Regulation and E-Delivery. Commissioner Peirce focused extensively on the costs associated with paper-based disclosure and the need to modernize delivery frameworks. She questioned the continued reliance on paper as the default method of delivering fund disclosures, observing that it does not meaningfully enhance investor engagement and imposes significant costs that ultimately reduce investor returns. She suggested that the SEC should consider making e-delivery the default method of disclosure and/or allowing e-delivery as the sole option for new investors. She noted that the persistence of paper as a "gold standard" has constrained the industry's ability to adopt more interactive disclosure formats and indicated that resolving the e-delivery issue is a necessary first step before broader innovation can occur.

Technology and Disclosure Innovation. Consistent with her emphasis on modernization, Commissioner Peirce encouraged the SEC and industry participants to embrace technological advancements. She highlighted the potential for interactive disclosures, artificial intelligence, and tokenization to improve investor engagement and operational efficiency. At the same time, she reiterated that regulators should avoid prescribing specific technological outcomes and instead create an environment in which innovation can develop organically.

Barriers to Entry and Exemptive Authority. Commissioner Peirce expressed concern that increasing regulatory complexity is discouraging innovation in the registered fund space. She suggested that innovators may be drawn to less regulated areas or other segments of the asset management industry. While emphasizing that the 1940 Act has served investors well, she encouraged the SEC to make more effective use of its exemptive authority to facilitate commercially viable solutions consistent with investor protection.

Retail Access to Private Markets. In the discussion with Mr. Pan, Commissioner Peirce addressed the expansion of retail access to private markets. She noted that, given the increasing concentration of growth in private markets, it is necessary to consider mechanisms for retail participation. She emphasized that such access is most appropriately provided through diversified exposure, professional management and vehicles subject to the 1940 Act. She cautioned against outcomes in which retail investors are disproportionately exposed to less attractive segments of private markets and underscored the importance of maintaining strong public markets alongside expanding private market access.

Private Credit and Liquidity Considerations. Commissioner Peirce addressed recent reports of redemption pressures in private credit vehicles. She characterized redemption limitations as an inherent feature of these products rather than a flaw and emphasized the importance of understanding underlying assets and liquidity characteristics.

She suggested that these developments provide an opportunity to evaluate whether regulatory frameworks appropriately accommodate such products and support sound product design.

Retirement Investing and Investor Choice. Commissioner Peirce reiterated her broader philosophy that investors should have discretion in allocating their assets, including within retirement accounts. She indicated that this principle may extend to private assets and digital assets. At the same time, she emphasized the importance of investor education, thoughtful portfolio construction, and alignment with long-term retirement objectives.

Proxy Voting, Stewardship, and 13G/13D Issues. Commissioner Peirce observed that current tensions regarding asset manager engagement may reflect a disconnect between managers' stewardship activities and investor expectations. She emphasized that passive and active strategies should align with disclosed practices and investors should be able to select managers consistent with their preferences. She also noted that questions regarding the distinction between passive and active engagement, including under the Schedule 13G and 13D frameworks, are highly fact specific.

Proxy Advisers. Commissioner Peirce acknowledged concerns regarding the influence of proxy advisors and noted that the SEC's authority in this area remains uncertain following recent court decisions. She suggested that any future regulatory action would depend on congressional authorization and would need to balance oversight with preserving the ability of market participants to express views.

Staff Guidance and Rulemaking. Commissioner Peirce reiterated concerns about overreliance on staff guidance. While recognizing that guidance can be useful, particularly in emerging areas such as digital assets, she emphasized that durable regulatory requirements should be adopted through formal rulemaking. She cautioned against the development of a "hidden" regulatory framework accessible only through informal channels.

Commissioner Peirce concluded by reflecting on the end of her tenure and expressing optimism about future Commission leadership and the potential for new perspectives to shape regulatory policy.

SEC Allows Tokenized Money Market Fund to Trade and Settle Intraday

On February 23, 2026, the SEC provided an exemptive order permitting an SEC-registered tokenized government money market fund (the "Fund"), its investment adviser, an affiliated dealer, and an affiliated transfer agent to engage in continuous purchase and selling of Fund shares at a price of $1.00 per share. The Fund uses blockchain technology in relation to maintaining a record of its shares. The affiliated transfer agent maintains the official record of share ownership through an integrated recordkeeping system with records in book-entry form and digital representations of Fund shares that are recorded – or digitized – on the applicable blockchain. The affiliated transfer agent's book-entry records would constitute the official record of share ownership, but transfers on a blockchain would act as an information source for the transfer agent to register transactions in Fund shares on its book-entry records.

- The application[1] requested the order under Section 6(c) of the 1940 Act to provide an exemption from Section 22(d) and Rule 22c-1 thereunder to permit the affiliated dealer and any other entity registered as an SEC-registered broker-dealer that had entered into a dealer agreement with the Fund (and any other future affiliated government money market fund that seeks to maintain a stable net asset value ("NAV") of $1.00 per share) and the Fund's distributor to purchase and sell to individual and institutional investors, on a principal basis, shares of the Fund at a value of $1.00 per share, rather than at the Fund's next-calculated NAV per share (the "Pricing Relief").

1 *See* WisdomTree Digital Trust *et al.*'s January 16, 2026 amended application here.

- The application additionally requested the order to provide an exemption from the prohibitions on affiliated joint transactions under Section 17(d) of the 1940 Act and Rule 17d-1 thereunder to permit the affiliated dealer to enter into an arrangement with the Fund to trade its shares in reliance on the Pricing Relief (the "Rule 17d-1 Relief").

The application proposed the following conditions, which were incorporated into the related SEC notice of application and the order:

1. The order would apply with respect to a fund that is organized as a government money market fund subject to the provisions and restrictions of Rule 2a-7 under the 1940 Act and whose shares are not listed on a national securities exchange. In addition, the applicants would not establish, operate or otherwise make available any facility that would create a secondary market for shares of a fund other than as contemplated in the application.
2. The Fund would not impose a sales charge or any Rule 12b-1 fees.
3. Any investor would have the option to purchase or redeem shares directly from the Fund to the extent permitted or required by the 1940 Act and rules thereunder.
4. Shares of the Fund purchased or sold in reliance on the order would only be purchased from or sold to an investor by the affiliated dealer at a price of $1.00 per share (plus or minus any dealer compensation). Shares of the Fund would only be purchased from or submitted for redemption to the Fund by the affiliated dealer in U.S. dollars at the Fund's NAV per share next calculated after the Fund's receipt of that dealer's order for purchase or redemption.
5. The affiliated dealer would not advertise or market that shares being purchased or sold in connection with the principal transaction service as being purchased or sold directly from the Fund. The affiliated dealer also would provide appropriate disclosure to inform investors (i) that they are purchasing from or selling their shares to the dealer, and (ii) of the investors' right to purchase and redeem shares from the Fund directly.
6. The Fund would calculate a market-based (or shadow) NAV per share on each day the NYSE is open for trading for purposes of confirming that its NAV continues to approximate fair value. If the Fund's market-based NAV per share deviates from the Fund's amortized-cost NAV per share by 0.25% or greater, the option to transact with the affiliated dealer would be either (i) temporarily suspended, effective upon the Fund's filing of Form N-CR with respect to such deviation, until the deviation has been remedied, and investors would be required to transact directly with the Fund, or (ii) the affiliated dealer would process any transactions at the Fund's next calculated NAV in accordance with Section 22(d) of the 1940 Act and Rule 22c-1 thereunder.

ROPES & GRAY ALERTS AND PODCASTS SINCE OUR January – February Update

Ropes & Gray *Crypto Quarterly: Digital Assets, Blockchain and Related Technologies Update*

April 30, 2026

The landscape of government enforcement, private litigation, and federal and state regulation of digital assets, blockchain and related technologies is constantly evolving. Each quarter, Ropes & Gray attorneys analyze government enforcement and private litigation actions, rulings, settlements, and other key developments in this space. We distill the flood of industry headlines so that you can identify and manage risk more effectively. This newsletter includes takeaways from this quarter's review.

No-Action Letter Permits Open-End Fund Participation under Co-Investment Orders

April 29, 2026

On April 27, 2026, the staff of the SEC's Division of Investment Management (the "Staff") issued a no-action letter (the "Letter") to J.P. Morgan Investment Management Inc. confirming that it would not recommend enforcement action if an open-end fund whose primary investment adviser or sub-adviser is an "Adviser" under a co-investment exemptive order, relies on such an order as a "Regulated Fund," subject to compliance with the order's terms and conditions. The Letter also confirms that the Staff would not recommend enforcement action if an open-end fund, closed-end fund, or BDC relying on co-investment relief satisfies the "Required Majority" standard under conditions 2 and 6(b) of the order through a committee of the board comprised of at least three disinterested, non-financially interested directors. The SEC's expansion of co-investment relief to open-end funds is the latest in a series of steps by the SEC to facilitate the retailization of private markets.

End-of-Term Funds: A Guide for GPs and LPs

April 23, 2026

Ten years ago, private equity fundraising was reaching new highs after re-emerging from the 2008 global financial crisis. Ten years later, many of those funds are hitting the ends of their terms. Meanwhile, we are several years into a dip in exit activity, and many of those more seasoned funds continue to hold meaningful assets. Most limited partnership agreements provide a mechanism for term extensions – and GPs are making those requests – but as time passes, both GPs and LPs may start asking, "What next?" In this Alert, we set forth some high-level guidelines for such conversations for both GPs and LPs.

2026 ICI Investment Management Conference Summary

April 22, 2026

The 2026 ICI Investment Management Conference reflected the industry's continued momentum under an encouraging regulatory environment. IM Director Brian Daly emphasized modernization and deregulation as key priorities and urged the industry to proactively engage with the SEC during the current administration's remaining tenure. Commissioner Hester Peirce, delivering keynote remarks in what she framed as a bookend to her tenure, called for a move away from a "misery" model of regulation in favor of a framework aligned with the practices of well-run firms. Key themes included expanding retail access to private markets, the rapid proliferation of ETF share classes, AI-driven transformation across compliance and operations, tokenization of financial assets, and fund proxy reform. Among attendees, there was a strong sense of forward motion, with firms actively pursuing innovative product structures and engaging regulators on long-sought modernization efforts.

Inadvertent Fiduciaries? DOL Guidance Creates New ERISA Risks for Proxy Advisory Arrangements

April 22, 2026

On April 14, 2026, the U.S. Department of Labor ("DOL") issued Technical Release 2026-01 (TR 2026-01), addressing the application of ERISA's fiduciary requirements and preemption provisions to proxy advisory services. TR 2026-01 does not amend the DOL's proxy voting regulation (at 29 C.F.R. § 2550.404a-1); however, it recontextualizes the relationships among ERISA plans, asset managers of plan asset funds, and proxy advisory firms in ways that warrant immediate review of existing arrangements. In light of this guidance, in this Alert, we discuss actions that asset managers and ERISA plan fiduciaries should consider.

Podcast: AI at Work – Drafting an Effective and Compliant AI Workplace Policy

April 8, 2026

In this second episode of AI at Work, Sophie Duffy, an employment associate, was joined by Jen Cormier and Greg Demers, partners in the employment practice, and Alyssa Clough Horton, a partner in the asset management practice, to discuss whether and how organizations should implement a dedicated workplace AI use policy.

Prediction Markets and Your Compliance Program – Conflicts of Interest and Reputational Risks

April 2, 2026

Recent decisions by some companies to prohibit employee participation in prediction markets signal growing concerns about the reputational, conflicts of interest, and confidentiality risks posed by this rapidly expanding marketplace. Every company where employees have access to nonpublic information, client intelligence, licensed information or data, or proprietary analytical expertise should assess whether its compliance framework adequately addresses the risks these platforms present.

If your company has a principles-based Code of Conduct that provides guidance to employees on ownership of and misuse of data, confidentiality, and conflicts, your company may be technically covered, but you should consider whether additional training, guidance, or policies specific to prediction market activity are appropriate. Preventing prohibited or potentially problematic conduct before it occurs is easier than remediating the problem after the fact. Companies should consider providing clearer examples and rules. This Alert explores these issues and provides some questions to ask.

A New Playbook for Prudence: DOL Proposes Process-Based Safe Harbor for Selection of Both Traditional and Alternative 401(k) Investments

March 31, 2026

On March 30, 2026, the U.S. Department of Labor ("DOL") released its long-awaited proposed regulation entitled "Fiduciary Duties in Selecting Designated Investment Alternatives" (the "Proposed Rule"), in response to President Trump's Executive Order that calls for expanded access to private equity and other alternative investments for 401(k) plans and their participants. However, rather than limiting its scope to asset allocation funds that invest in alternative assets, the Proposed Rule offers an expansive view of fiduciary prudence under ERISA with respect to the selection of any designated investment alternative, which is consistent with the DOL's historically neutral posture that neither favors nor disfavors any particular type of investment or investment strategy. Accordingly, the Proposed Rule establishes a process-based safe harbor to protect fiduciaries of participant-directed individual account plans for the selection of designated investment alternatives – effectively providing a yardstick that all plan fiduciaries can use to gauge their actions and decision-making through the lens of prudence under ERISA. This Alert explores some of the notable aspects and themes of the Proposed Rule that all ERISA plan fiduciaries should consider.

SEC and CFTC Issue Landmark Joint Guidance on Classification of Crypto Assets Under Federal Securities Laws

March 25, 2026

On March 17, 2026, the SEC and the CFTC jointly released interpretive guidance (the "Release") clarifying when transactions in crypto assets are subject to regulation under federal securities laws. The Release sets forth the SEC's and the CFTC's views on many topics relevant to market participants operating in the digital asset space. This Alert offers key takeaways for crypto asset market participants and summarizes the provisions of the Release.

Multi-Class ETFs: SEC Grants Conditional Relief, Completing Regulatory Framework

March 24, 2026

On March 17, 2026, the SEC granted important regulatory relief for broker-dealers and other market participants engaging in transactions involving exchange-traded shares of a Multi-Class ETF. At the same time, the staff of the SEC's Division of Trading and Markets issued a no-action letter for broker-dealers that effect an in-kind creation or redemption transaction on behalf of customers involving the ETF shares of a Multi-Class ETF. This relief, requested by the Investment Company Institute, is substantially similar to the relief previously granted in 2019 for ETFs operating under Rule 6c-11 of the 1940 Act, but specifically addresses the unique structure of Multi-Class ETFs. In this whitepaper, we discuss how sponsors and their Boards and other Fund industry participants can navigate implementation, which will no doubt involve certain challenges and complexities.

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If you would like to learn more about the developments in this Update, please contact your usual Ropes & Gray attorney contacts.